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APPENDIX D: Interstate Compact on the Placement of Children

This section was written by Frank Barthel, retired Secretariat for the Association of Administrators of the ICPC, American Public Human Services Association.

The Interstate Compact on the Placement of Children (hereinafter ICPC or Compact) is statutory law, which has been enacted uniformly in all 50 states, the District of Columbia, and the U.S. Virgin Islands. [In Idaho the Compact is codified at Idaho Code § 16-2101 et.seq. Since the Compact is also a contract among the states as well as a statute in each of them it must be interpreted and implemented uniformly by all of them.

The Compact is designed to provide the necessary legal framework for placements, including adoptive placements, in which more than one state is involved. This point is important because jurisdiction over a child ends at the state line. The ICPC, though only one of many state laws which govern the placement of children, is the only tool states have to ensure that children placed across state lines are protected.

OVERVIEW OF THE COMPACT

The Compact is a means of permitting child placement activities to be pursued throughout the country in much the same way and with the same safeguards and services as though they were being conducted within a single state or jurisdiction. The Compact promotes the availability of services to children who are placed on an interstate basis, and it secures greater assurance that those making the interstate placements will discharge their responsibilities toward the children involved

throughout the placement period. Without the Compact, the boundaries of each single state or jurisdiction present obstacles to the rendering of services and the enforcement of responsibility. In the absence of the Compact, public authorities in one state are not obligated to make pre-placement investigations or, for example, supervise post-adoptive placements for the sending state.

The Compact sets forth through its 10 articles:

- ◆ the types of placement situations covered by the law;
- ◆ the persons or agencies who, when they place a child from one party state into another party state, must follow Compact procedures; and
- ◆ the specific protections, services and requirements available by virtue of its enactment.

The highlights of the law are summarized on the following pages.

WHO MUST FOLLOW THE COMPACT?

The law defines the persons and agencies who, when they place a child from one state into another state, must follow ICPC procedures. These persons and agencies are called "sending agencies" and include the following:

- ◆ A state, or any officer or employee of a state;
- ◆ A subdivision of a state, or any officer or employee of the subdivision;
- ◆ A court of a state; and

- ◆ Any person, corporation, association, or charitable agency of a state.

The Compact also exempts certain persons from following the Compact, but only when one of the classes of exempted persons both sends and receives the child. The persons specifically exempted from the Compact include a child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, and a non-agency guardian.

INTERSTATE PLACEMENTS

An interstate placement occurs when a person or agency sends or brings a child, or causes a child to be sent or brought, across a state line. However, the interstate placement of a child cannot occur until the appropriate public authorities in the receiving state notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child (see Article III (d) of the ICPC). The sending agency does not have to have physical custody or legal control over the child, but need only be involved in facilitating the placement for the placement to be covered under the Compact.

Agencies and courts should not place children out-of-state until the receiving state does a home assessment and allows the placement to occur. Delays in the completion of home studies occur too frequently. ICPC Regulation No. 7, Priority Placement (see the following section on Issues to be Resolved) is a method to reduce delays for interstate placements.

Not all arrangements for a child's care in the receiving state are considered placements under the Compact. The law specifically exempts from the Compact placements into any institution caring for the mentally ill, mentally defective or epileptic, or any institution primarily educational in

character, and any hospital or other medical facility.

In general, the kinds of placements which require that the Compact be followed include:

- ◆ placements with parents, close relatives, and non-agency guardians unless a parent, close relative, or non-agency guardian makes the placement;
- ◆ adoptive placements;
- ◆ foster home placements;
- ◆ child-caring facilities, including residential treatment, group homes, and institutions; or
- ◆ placements of adjudicated delinquents in institutions in other states.

In making a placement, the sending agency is required to retain financial and legal responsibility for the child until termination of the interstate placement. Termination of jurisdiction may occur when:

- ◆ the sending agency's termination of the placement is with the concurrence of the Compact Administrator in the receiving state;
- ◆ the child reaches the age of majority;
- ◆ the child is adopted; or
- ◆ the child returns to the sending state upon the request or direction of the sending agency.

Dismissal of state custody of a child who is to be placed out-of-state or dismissal of custody of a child in an interstate placement is a violation of state law unless one of the above provisions prevails.

INTERSTATE CHILD PLACEMENT NEEDS AND SAFEGUARDS

Finding the most appropriate home or placement resource for a child is a big job and rarely an easy one. Often there are more children than homes available in a given state. For some children, appropriate

permanent homes with prospective adoptive parent(s) or with relatives are available in other states. Children already in a foster family home may want to stay with the family when they move to another state. Children who require the services of a specialized residential facility unavailable in their own state may benefit from an out-of-state placement. For these reasons, the needs of children cannot be met by restricting child placement to the territory of a single state or jurisdiction.

Among the safeguards provided by the Compact to the child, as well as to receiving and sending states, are the following:

- ◆ provides for home studies and an evaluation of each interstate placement before the placement is made;
- ◆ allows the prospective receiving state to ensure all its applicable child placement laws and policies are followed before it approves an interstate placement;
- ◆ gives the prospective receiving state the opportunity to consent to or deny a placement before it is made;
- ◆ provides for continual supervision and regular reports on each interstate placement;
- ◆ guarantees the child legal and financial protection by fixing these responsibilities with the sending agency or individual; and
- ◆ ensures that the sending agency or individual does not lose legal jurisdiction over the child once the child is moved to the receiving state.

COMPACT RELATIONSHIP TO OTHER STATE LAWS

The Compact must interact with other state laws. The Compact specifies that certain procedures must be followed when an interstate placement is contemplated or made. Furthermore, the compact law itself is neutral on the question of the desirability of

interstate placements, and does not mention who may place a child or under what circumstances a child may be placed for adoption. Other state laws and policies govern these decisions and, along with the Compact, become a state's pre-adoption requirements.

HOW IS THE INTERSTATE COMPACT ADMINISTERED?

The Compact is administered by an Office in the state department of social Services or the state's equivalent agency. Each state has appointed a Compact Administrator and one or more Deputy Administrators who oversee or perform the day-to-day tasks associated with the administration of the ICPC. The Association of Administrators of the Interstate Compact on the Placement of Children (hereinafter AAICPC or Association) formed a working Association with the American Public Human Services Association (APHSA, formerly the American Public Welfare Association), which provides Secretariat services to the Association. The AAICPC, working in conjunction with the Secretariat, has adopted procedures and developed standard forms for implementing the ICPC.

The Association, under the authority given to it in the Compact law, has adopted regulations which further clarify provisions of the ICPC. The Association and Secretariat also work to resolve problems among the party states.

ISSUES TO BE RESOLVED

Many of the original problems for which the Compact was written have been surmounted, but other issues have emerged. These issues include ways in which the Compact can be used more creatively to protect children, as well as to facilitate interstate placements when children are moving into permanent homes across state lines.

In conjunction with the National Council of Juvenile and Family Court Judges and the National Association of Public Child Welfare Administrators, AAICPC is working to resolve delays in the interstate placement of children. The AAICPC passed Regulation No. 7, Priority Placement that establishes time frames in which an ICPC referral must be completed. Section 5 (a) of the regulation pertains to specific facts that must be in place before the regulation can be used. However, section 5 (b) refers to all ICPC referrals that have been pending for over 30 working days and a decision has not been made to allow or to deny the placement.

Another procedure to reduce delays and facilitate the timely completion of home studies, is the creation of border state agreements. The basic premise of these agreements is to allow a local social worker in the sending state to complete a home study in the receiving state while the ICPC referral packet is reaching the appropriate authorities in the states involved in a particular child's case. There are provisions in the agreements whereby local social workers in both states are involved in the home study process.

Another issue that needs attention of the courts, child welfare administrators, and compact administrators is that of unilateral dismissal of jurisdiction by the courts of child custody prior to an interstate placement or subsequent to a child's placement out of state. Known as "dumping," unilateral dismissal of jurisdiction often causes the receiving state to assume the financial responsibility of the child should the placement disrupt or otherwise not be successfully completed. Services that the child and family need in order continue a positive placement may be discontinued contributin9 to a disruptive

placement. Once custody is dismissed, supervision of the placement will not occur until the child comes back into the child welfare system.

A final problem is the issue of which state adoption consent law applies. Most ICPC adoption cases are private agency or individual adoption cases. finalization of the adoption often occurs in the receiving state. Prior to the child being placed with prospective adoptive parent(s), the sending agency will require a signed consent by the biological parent(s) freeing the child for adoption. However, when finalization occurs in the receiving state, the latter may require that their state's consent procedure be followed, thereby requiring the biological parent(s) to sign another consent. Not only can the signing of another consent form cause delays in finalization of the adoption, it can result in the biological parent(s) deciding that they no longer want the adoption. This can lead to further court action at the trial and appellate levels. One possible solution is for the receiving state to recognize and accept a valid consent from a sister jurisdiction.

The following regulation was adopted to provide an expedited process for interstate placements:

REGULATION NO. 7

1. Words and phrases used in this regulation shall have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children (ICPC). A word or phrase not appearing in ICPC shall have the meaning ascribed to it by special definition in this regulation or, where not so defined, the meaning properly ascribed to it in common usage.

2. Whenever a court, upon request, or on its own motion, or where court approval

is required, determines that a proposed priority placement of a child from one state into another state is necessary, the court shall make and sign an order embodying that finding. The court shall send its order to the Sending Agency within two (2) business days. The order shall include the name, address, telephone number, and if available, the FAX number, of the judge and the court. The court shall have the sending agency transmit, within three (3) business days, the signed court order, a completed Form 100A ("Request for Placement") and supporting documentation pursuant to ICPC Article III, to the sending state Compact Administrator. Within a time not to exceed two (2) business days after receipt of the ICPC priority placement request, the sending state Compact Administrator shall transmit the priority placement request and its accompanying documentation to the receiving state Compact Administrator together with a notice that the request for placement is entitled to priority processing.

3. The court order, ICPC-100A, and supporting documentation referred to in Paragraph Two (2) hereof shall be transmitted to the receiving state Compact Administrator by overnight mail together with a cover notice calling attention to the priority status of the request for placement. The receiving state Compact Administrator shall make his or her determination pursuant to Article III (d) of ICPC as soon as practicable but no later than twenty (20) business days from the date the overnight mailing was received and forthwith shall send the completed 100A by FAX to the sending state Compact Administrator.

4. (a) If the receiving state Compact Administrator fails to complete action as the receiving state prescribed in Paragraph Three (3) hereof within the time period allowed, the receiving state shall be deemed

to be out of compliance with ICPC. If there appears to be a lack of compliance, the court, which made the priority order, may so inform an appropriate court in the receiving state, provide that court with copies of relevant documentation in the case, and request assistance. Within its jurisdiction and authority, the requested court may render such assistance, including the making of appropriate orders, for the purpose of obtaining compliance with this Regulation and ICPC.

(b) The foregoing shall not apply if:

- (1) within two (2) business days of receipt of the ICPC priority placement request, the sending state Compact Administrator determines that the ICPC request documentation is substantially insufficient, specifies that additional information is needed, and requests the additional documentation from the sending agency. The request shall be made by FAX, or by telephone if FAX is not available; or
- (2) within two (2) business days of receipt of the ICPC priority placement request, the receiving state Compact Administrator notifies the sending state Compact Administrator that further information is necessary. Such notice shall specifically detail the information needed. For a case in which this subparagraph applies, the twenty (20) business day period for the receiving state Compact Administrator to complete action shall be calculated from the date of the receipt by the receiving state Compact Administrator of the information requested.

Where the sending state court is not itself the sending agency, it is the responsibility of the sending agency to keep the court, which issued the priority order, informed of the status of the priority request.

5. A court order finding entitlement to a priority placement shall not be valid unless it contains an express finding that one or more of the following circumstances applies to the particular case and sets forth the facts on which the court bases its finding:

(a) the proposed placement recipient is a relative belonging to a class of persons who, under Article VIII(a) of ICPC could receive a child from another person belonging to such class, without complying with ICPC and; (1) the child is under two years of age; or (2) the child is in an emergency shelter; or (3) the court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

(b) the receiving state Compact Administrator has a properly completed ICPC-100A and supporting documentation for over thirty (30) business days, but the sending agency has not received a notice pursuant to Article III (d) of ICPC determining whether the child may or may not be placed.